

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of )  
 GMW Fire Protection, Inc., an Alaska )  
 Corporation, )  
 Plaintiff, )  
 vs. )  
 KANAG'IQ CONSTRUCTION CO., )  
 INC., an Alaska Corporation, and )  
 WESTERN SURETY COMPANY, a )  
 South Dakota Corporation, )  
 Defendants. ) Case No. A05-170 CI (TMB)

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR  
 ADDITIONAL PEREMPTORY CHALLENGES**

On January 8, 2007, counsel for the parties participated in a pretrial conference before the Court. At that time, the undersigned counsel for Defendants inquired about additional peremptory challenges for Defendants, based on the fact that there are two defendants in this case as opposed to a single defendant. Defendants support their request as follows.

Federal Civil Rule 47(b) provides that the Court shall allow the number of peremptory challenges provided by 28 U.S.C. § 1870, which provides in relevant part:

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional

1 peremptory challenges and permit them to be exercised separately or  
 2 jointly.

3 28 U.S.C. § 1870 (1959). Thus, it is within the Court's discretion to allow Defendants  
 4 additional peremptory challenges during jury selection in this case. In a case involving  
 5 multiple parties, the California District Court granted all parties the *maximum* number of  
 6 peremptory challenges allowable under 28 U.S.C. § 1870. Los Angeles Memorial  
 7 Coliseum v. National Football League, et al., 89 F.R.D. 497, 510 (D. Cal., 1981). In that  
 8 case there were cross-claims between defendants, while there are no cross-claims  
 9 between Defendants in this case.

10 Defendants' interests in this case, however, are potentially adverse. If Plaintiff  
 11 succeeds on its claim for action on the bond, Defendant Western Surety Company will  
 12 pursue Defendant Kanag'iq for amounts paid from the bond. The issue of additional  
 13 peremptory challenges frequently turns upon whether the defendants' interests are  
 14 adverse to each other. LNC Investments, Inc., et al. v. First Fidelity Bank, et al., 2000  
 15 WL 11188898 at \*2 (S.D.N.Y.). The reasoning underlying this is that it is thought fair to  
 16 give defendants with adverse interests an additional challenge or challenges so that their  
 17 individual interests may be protected. Id. While Defendants' interests are not adverse at  
 18 this time, those interests are potentially adverse depending on the outcome at trial.

19 Therefore, to protect the individual interests of Defendants Kanag'iq and Western  
 20 Surety Company, they respectfully request additional peremptory challenges in a number  
 21 that the Court deems appropriate.

DATED at Anchorage, Alaska this 15<sup>th</sup> day of January 2008.

EIDE & GINGRAS, P.C.  
Attorneys for Defendants  
Kanag'iq Construction Co., Inc. and  
Western Surety Company

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**CERTIFICATE OF SERVICE**

I am a legal secretary employed by the law firm of Eide & Gingras, P.C. That on this 15<sup>th</sup> day of January 2008, I served

[x] Electronically

a true and accurate copy of the foregoing document upon the following counsel of record:

Sarah J. Tugman, Esq.  
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EIDE & GINGRAS, P.C.

By /s/Donna Charter

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Memorandum of Law in Support of Defendants' Motion  
Requesting Additional Peremptory Challenges

*The United States for the use of GMW Fire Protection v. Kanag'iq Construction Co., Inc., et al.*  
Case No. A05-170 Civil (TMB)